

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUNIL SUDUNAGUNTA

v.

NANTKWEST, INC., PATRICK
SOON-SHIONG, RICHARD
GOMBERG, BARRY J. SIMON,
STEVE GORLIN, MICHAEL D.
BLASZYK, HENRY JI, RICHARD
KUSSEROW, JOHN T. POTTS, JR.,
ROBERT ROSEN, JOHN C.
THOMAS JR., MERRILL LYNCH,
PIERCE, FENNER & SMITH, INC.,
CITIGROUP GLOBAL MARKETS
INC., JEFFERIES LLC, PIPER
JAFFRAY & CO., and MLV & CO.,
LLC.,

Case No. 16-cv-01947-MWF-JEM

Consolidated with
2:16-cv-3438-MWF-JEM

**JUDGMENT APPROVING CLASS
ACTION SETTLEMENT AND
ORDER AWARDING
ATTORNEYS' FEES AND
REIMBURSEMENT OF
LITIGATION EXPENSES**

The Motion for Final Approval of Class Action Settlement and Plan Allocation (the "Settlement Motion") and the Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Plaintiffs' Awards (the "Fee Motion"), filed by Plaintiffs Donald Hu and Brayton Li ("Plaintiffs"), came regularly for hearing before this Court on April 29, 2019. After consideration of all the papers filed in connection therewith, the arguments of counsel, and all other

1 matters presented to the Court, and good cause appearing therefore, the two
2 motions are **GRANTED** and,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

4 1. The Stipulation of Settlement dated October 31, 2018 (the
5 “Stipulation” or “Settlement Agreement”) and any exhibits thereto shall be
6 incorporated into this Order as though all terms therein are set forth in full. The
7 capitalized terms in this Order shall have the same force and effect as the terms
8 defined in the Settlement Agreement.

9 2. This Court has jurisdiction of the subject matter of this Action and
10 over all of the Parties and all members of the Class.

11 3. The form, content, and method of dissemination of notice given to the
12 Class was adequate and reasonable and constituted the best notice practicable under
13 the circumstances, including individual notice to all Class Members who could be
14 identified through reasonable effort.

15 4. Notice, as given, complied with the requirements of the Federal Rules
16 of Civil Procedure, satisfied the requirements of due process, as well as the Private
17 Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78-u4(a)(7), and
18 constituted due and sufficient notice of the matters set forth herein. The Court finds
19 that a full opportunity has been afforded to Class Members to object to the
20 Settlement and/or to participate in the Final Approval Hearing. Furthermore, the
21 Court hereby affirms that due and sufficient notice has been given to the
22 appropriate State and Federal officials pursuant to the Class Action Fairness Act, 28
23 U.S.C § 1715.

24 5. The Settlement set forth in the Stipulation is fair, reasonable, and
25 adequate. In making this determination, the Court has considered factors with
26 respect to fairness, which include “(1) the strength of the plaintiff’s case; (2) the
27 risk, expense, complexity and likely duration of further litigation; (3) the risk of
28 maintaining class action status throughout trial; (4) the amount offered in

1 settlement; (5) the extent of discovery completed; (6) the experience and views of
2 counsel; (7) the presence of a governmental participant; (8) the reaction of the class
3 members to the proposed settlement; and (9) the absence of collusion in the
4 settlement procedure.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th
5 Cir. 2004).

6 (i) The Settlement was vigorously negotiated at arm’s length by
7 Class Plaintiffs on behalf of the Class and by Defendants, all of whom were
8 represented by highly experienced and skilled counsel. The case settled only after:
9 (a) a mediation conducted by an experienced mediator who was thoroughly familiar
10 with this litigation; (b) the exchange of detailed mediation statements prior to the
11 mediation which highlighted the factual and legal issues in dispute; (c) extensive
12 paper and deposition discovery; and (d) class certification. Accordingly, both Class
13 Plaintiffs and Defendants were well-positioned to evaluate the Settlement value of
14 this Action. The Stipulation has been entered into in good faith and is not collusive.

15 (ii) If the Settlement had not been achieved, both Class Plaintiffs and
16 Defendants faced the expense, risk, and uncertainty of extended litigation. The Court
17 takes no position on the merits of either Class Plaintiffs’ or Defendants’ arguments,
18 but notes these arguments as evidence in support of the reasonableness of the
19 Settlement.

20 6. Class Plaintiffs and Class Counsel have fairly and adequately
21 represented the interest of the Class Members in connection with the Settlement.

22 7. Class Plaintiffs, all Class Members, and Defendants are hereby bound
23 by the terms of the Settlement set forth in the Stipulation.

24 8. The Settlement on the terms set forth in the Stipulation is finally
25 approved as fair, reasonable and adequate. The Settlement shall be consummated
26 in accordance with the terms and provisions of the Stipulation. The Parties are to
27 bear their own costs and attorneys’ fees, except as otherwise provided in the
28

1 Stipulation and, as among Defendants, as governed by any contract existing
2 between or among two or more Defendants.

3 9. All Released Parties as defined in the Stipulation are released in
4 accordance with, and as defined in, the Stipulation.

5 Upon the Effective Date, Class Plaintiffs and each Class Member shall be
6 deemed to have, and by operation of this Judgment shall have, fully, finally, and
7 forever released, relinquished, and discharged all Released Claims against the
8 Released Parties, whether or not such Class Member executes and delivers a Proof
9 of Claim and Release. Nothing contained herein shall, however, bar any action or
10 claim to enforce the terms of the Stipulation or this Judgment.

11 10. Upon the Effective Date, each of the Defendants shall be deemed to
12 have, and by operation of this Judgment shall have, fully, finally, and forever
13 released Plaintiffs and Class Counsel from any claim related to this Action or the
14 prosecution thereof. Nothing contained herein shall, however, bar any action or
15 claim to enforce the terms of the Stipulation or this Judgment.

16 11. Upon the Effective Date, in accordance with 15 U.S.C. § 78u-
17 4(f)(7)(A), all Persons shall be enjoined and barred from commencing or continuing
18 any claim, cross-claim, third-party claim, claim over, or action in any forum against
19 the Released Parties, seeking, as damages, indemnity, contribution, or otherwise,
20 the recovery of all or part of any liability or settlement which such persons (i) paid,
21 (ii) were obligated to pay or agreed to pay, or (iii) may become obligated to pay to
22 the Settlement Class, as a result of such persons' liability for or participation in any
23 acts, facts, statements or omissions that were or could have been alleged in the
24 Action. Further, upon the Effective Date, NantKwest and the Individual
25 Defendants shall be enjoined and barred from commencing or continuing any
26 claim, cross-claim, third-party claim, claim over, or action in any forum against the
27 Underwriter Defendants, seeking, as damages, indemnity, contribution, or
28 otherwise, the recovery of all or part of any sum (including but not limited to

1 attorneys' fees) that NantKwest or any Individual Defendant paid, was obligated to
2 pay or agreed to pay, or may become obligated to pay, arising from the Action.
3 Notwithstanding the foregoing, nothing herein shall affect other obligations or
4 claims between or among the Released Parties, including any contractual
5 obligations NantKwest may have to pay or reimburse defense costs (including
6 reasonable attorneys' fees) incurred in the Action by the Underwriter Defendants,
7 or claims, cross-claims, third-party claims, claims over, or actions based on any
8 such obligations.

9 12. All Class Members who have not made their objections to the
10 Settlement, or any aspect thereof (including Plaintiffs' application for an award of
11 attorneys' fees and for reimbursement of their out-of-pocket costs incurred in the
12 prosecution of the Action (the "Fee Request")), in the manner provided in the
13 Notice are deemed to have waived any objections by appeal, collateral attack, or
14 otherwise.

15 13. All Class Members who have failed to properly file requests for
16 exclusion (requests to opt out) from the Class are bound by the terms and
17 conditions of the Stipulation and this Final Judgment.

18 14. The requests for exclusion, if any, by the persons or entities identified
19 in Exhibit A to this Judgment are accepted by the Court.

20 15. All other provisions of the Stipulation are incorporated into this
21 Judgment as if fully set forth herein. To the extent that the terms of this Judgment
22 conflict with the terms of the Stipulation, the Stipulation shall control.

23 16. Plaintiffs are hereby barred and enjoined from instituting,
24 commencing, maintaining, or prosecuting in any court or tribunal any of the
25 Released Claims against any of the Released Parties.

26 17. Neither the Stipulation nor the Settlement, nor any act performed or
27 document executed pursuant to or in furtherance of the Stipulation or the
28 Settlement: (a) is or may be deemed to be, or may be used as, a presumption,

1 concession, or admission of, or evidence of, the validity of any Released Claim or
2 of any wrongdoing or liability of the Defendants or any of the Released Parties; or
3 (b) is or may be deemed to be, or may be used, as a presumption, concession, or
4 admission of, or evidence of, any fault or omission of any of the Defendants or any
5 of the Released Parties in any civil, criminal or administrative proceeding in any
6 court, administrative agency or other tribunal; or (c) is or may be deemed to be an
7 admission or evidence that any claims asserted by Class Plaintiffs lacked merit in
8 any civil, criminal or administrative proceeding. Defendants and the Released
9 Parties may file the Stipulation and/or this Judgment in any action that may be
10 brought against them in order to support a defense or counterclaim based on
11 principles of *res judicata*, collateral estoppel, release, good faith settlement,
12 judgment bar or reduction, or any other theory of claim preclusion or issue
13 preclusion or similar defense or counterclaim.

14 18. Pursuant to, and in full compliance with, the Federal Rules of Civil
15 Procedure, this Court hereby finds and concludes that due and adequate notice was
16 directed to all Persons and entities who are Class Members advising them of the
17 Plan of Allocation and of their right to object thereto, and a full and fair opportunity
18 was accorded to all Persons and entities who are Class Members to be heard with
19 respect to the Plan of Allocation.

20 19. The Court hereby finds and concludes that the formula for the
21 calculation of the claims of Authorized Claimants, which is set forth in the Notice
22 of Proposed Settlement of Class Actions sent to Class Members, provides a fair and
23 reasonable basis upon which to allocate the net proceeds of the Settlement among
24 Class Members, with due consideration having been given to administrative
25 convenience and necessity.

26 20. In the event that the Stipulation is terminated in accordance with its
27 terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc*
28 *pro tunc*; and (ii) the Action shall proceed as provided in the Stipulation.

1 21. Without affecting the finality of this Judgment in any way, this Court
2 retains continuing jurisdiction over: (a) implementation of this Settlement and any
3 award or distribution of the Settlement Fund, including interest earned thereon; (b)
4 disposition of the Settlement Fund; (c) hearing and determining applications for
5 attorneys' fees, interest and expenses in the Action; and (d) all Parties hereto for the
6 purpose of construing, enforcing, and administering the Stipulation.

7 22. The Court finds and concludes that during the course of this Action,
8 the Defendants, Defendants' Counsel, Class Plaintiffs and Class Counsel complied
9 with the requirements of Rule 11 of the Federal Rules of Civil Procedure. No Party
10 or their respective counsel violated any of the requirements of Rule 11 of the
11 Federal Rules of Civil Procedure with respect to any of the complaints filed in this
12 Action, any responsive pleadings to any of the above complaints or any motion
13 with respect to any of the above complaints.

14 23. Notice of Class Counsel's motion for an award of attorneys' fees and
15 reimbursement of litigation expenses was given to all potential Class Members who
16 or which could be identified with reasonable effort. The form and method of
17 notifying the Class of the motion for an award of attorneys' fees and expenses
18 satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the
19 United States Constitution (including the Due Process Clause), the Private
20 Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, *et seq.*, as amended,
21 and all other applicable law and rules; constituted the best notice practicable under
22 the circumstances; and constituted due and sufficient notice to all persons and
23 entities entitled thereto.

24 24. Class Counsel are hereby awarded attorneys' fees in the amount of
25 25% of the Gross Settlement Fund (which is equal to the Settlement Amount, plus
26 interest earned thereon from the date the Settlement Fund was funded to the date of
27 payment), and \$177,408.07 in reimbursement of Class Counsel's litigation
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1 expenses (which fees and expenses shall be paid from the Settlement Fund), which
2 sums the Court finds to be fair and reasonable.

3 25. In making this award of attorneys' fees and reimbursement of
4 expenses to be paid from the Settlement Fund, the Court has considered and found
5 that:

6 (a) The Settlement has created a fund of \$12,000,000 in cash, plus
7 interest, that has been funded into escrow pursuant to the terms of the Stipulation,
8 and that numerous Class Members who or which submit acceptable Claim Forms
9 will benefit from the Settlement that occurred because of the efforts of Class
10 Counsel;

11 (b) The fee sought by Class Counsel has been reviewed and
12 approved as reasonable by the Court-appointed Class Representatives, who oversaw
13 the prosecution and resolution of the Action;

14 (c) Approximately 25,375 copies of the Notice were mailed to
15 potential Class Members and nominees stating that Class Counsel would apply for
16 attorneys' fees in an amount not exceed 25% of the Settlement Amount and
17 reimbursement of Lead Counsel's litigation expenses in an amount not to exceed
18 \$250,000;

19 (d) Class Counsel has conducted the litigation and achieved the
20 Settlement with skill, perseverance and diligent advocacy;

21 (e) The Action raised a number of complex issues;

22 (f) Had Class Counsel not achieved the Settlement, there would
23 remain a significant risk that Plaintiffs and the other members of the Class may
24 have recovered less or nothing from Defendants;

25 (g) Class Counsel devoted over 5,000 hours of professional time,
26 with a lodestar value of approximately \$3,123,720, to achieve the Settlement;

1 (h) The amount of attorneys' fees awarded and expenses to be
2 reimbursed from the Settlement Fund are fair and reasonable and consistent with
3 awards in similar cases; and

4 (i) There were no objections to the requested attorneys' fees and
5 expenses.

6 26. The two Court-appointed Class Plaintiffs (Donald Hu and Brayton Li)
7 are awarded \$7,500 each, to be paid from the Settlement Fund as reimbursement for
8 the reasonable costs and expenses, including time spent, directly related to his
9 representation of the Settlement Class.

10 27. Any appeal or any challenge affecting this Court's approval regarding
11 any attorneys' fees and expense application shall in no way disturb or affect the
12 finality of the Judgment.

13 28. Exclusive jurisdiction is hereby retained over the parties and the Class
14 Members for all matters relating to this Action, including the administration,
15 interpretation, effectuation or enforcement of the Stipulation and this Order.

16 29. In the event that the Settlement is terminated or the Effective Date of
17 the Settlement otherwise fails to occur, this Order shall be rendered null and void to
18 the extent provided by the Stipulation.

19 30. There is no just reason for delay in the entry of this Order, and
20 immediate entry by the Clerk of the Court is expressly directed.

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23 Dated: May 13, 2019.

24 MICHAEL W. FITZGERALD
25 United States District Judge
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EXHIBIT A

***Sunil Sudunagunta v. Nantkwest, Inc. et al*, Case No. 2:16-cv-01947-MWF-
JEM (C.D. Cal.)
Exclusion Report**

Exclusion	Name	Date	City	State	Number of Shares
1.	Robert Dean Ehlen	4/12/2019	Napa	CA	Purchased 30 shares on 7/28/2015